

In the United States Court of Federal Claims

No. 05-1130C

(Filed: December 29, 2005)

REGINALD HILL,

Plaintiff,

V.

THE UNITED STATES,

Defendant.

Reginald Hill, appearing *pro se*, West Palm Beach, FL.

Allison Kidd-Miller, Civil Division, United States Department of Justice, Washington, DC, counsel of record for Defendant, with whom were *Peter D. Keisler*, Assistant Attorney General, *David M. Cohen*, Director, and *Patricia M. McCarthy*, Assistant Director.

OPINION AND ORDER

WHEELER, Judge.

BACKGROUND

Plaintiff, Reginald Hill, filed his *pro se* Complaint on October 20, 2005 alleging a variety of grievances against the Clerk of the United States District Court for the Southern District of Florida (District Court), individual employees of the District Court, and the Administrative Office of the United States Courts. According to the Complaint, Plaintiff was employed as an Operations Clerk at the District Court from June 1997 to August 2003. In

August or September 2003, Plaintiff received a promotion to the position of Courtroom Deputy Clerk.¹ Shortly thereafter, the Chief Deputy Clerk “reassigned” Plaintiff to his former position as Operations Clerk, citing Plaintiff’s “failure to complete required training for the Courtroom Deputy position,” “insubordination,” and “inappropriate conduct.”² After being placed on unpaid leave in December 2003, Plaintiff was terminated in August 2004. Plaintiff’s Exhibit 4 at 3; Complaint at ¶ 6.

Plaintiff’s grievances stem from his demotion, suspension, and eventual termination. He alleges that these adverse personnel actions were taken in retaliation for his complaints about a hostile work environment at the District Court. Plaintiff’s Complaint also alleges negligent retention and supervision of individual court employees to whom Plaintiff was subordinate. Plaintiff asserts these claims under various tort theories, the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments, Title VII of the Civil Rights Act of 1964, the Florida Civil Rights Act of 1992, the Back Pay Act, and the Tucker Act. Plaintiff requests reinstatement as Courtroom Deputy, back pay pursuant to 5 U.S.C. § 5596, front pay, fringe benefits, correction of his personnel records, litigation expenses, compensatory damages in an unspecified amount, punitive damages of \$100,000, and interest.

On November 18, 2005, Defendant filed a motion to dismiss for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of this Court. In response, Plaintiff has asked the Court to transfer to a United States District Court any causes of action for which this Court does not have jurisdiction. Defendant opposes Plaintiff’s motion to transfer.

In ruling on motions to dismiss for lack of subject matter jurisdiction, the Court accepts as true the undisputed allegations in the Complaint, and draw all inferences in favor of the plaintiff. Reynolds v. Army & Air Force Exch. Serv., 846 F.2d 746 (Fed. Cir. 1988); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Furthermore, where a plaintiff appears *pro se*, his pleadings are construed “liberally,” and held to “less stringent standards than formal pleadings drafted by lawyers.” McSheffrey v. United States, 58 Fed. Cl. 21, 25 (2003) (quoting Haines v. Kerner, 404 U.S. 519 (1972)). Nonetheless, even *pro se* plaintiffs have the burden to establish subject matter jurisdiction by a preponderance of the evidence. Tindle v. United States, 56 Fed. Cl. 337, 341 (2003). Because Plaintiff has not met this burden here, RCFC 12(h)(3) mandates that the Court dismiss the action for lack of subject matter

¹ Plaintiff states that the promotion occurred August 25, 2003. Complaint at ¶ 5. Plaintiff’s Exhibit 4 gives the promotion date as “approximately September 8th [2003].”

² Plaintiff’s Exhibit 4 at 1. Plaintiff received notice of his demotion to Operations Clerk on November 7, 2003. The demotion took effect November 19, 2003. Id. at 3.

jurisdiction. The Court also declines to transfer any part of the action to a United States District Court.

DISCUSSION

Unlike the United States District Courts, the United States Court of Federal Claims is not endowed with general jurisdiction. This Court's jurisdiction is proscribed by the Tucker Act. That statute provides, in relevant part:

The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

28 U.S.C. § 1491(a)(1) (2000). After reviewing each allegation in Plaintiff's Complaint, the Court concludes it is without jurisdiction to hear this case.

Count I of the Complaint first alleges violations of due process. Complaint at ¶ 23. The Court has no jurisdiction to hear such a claim. Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997); Collins v. United States, 67 F.3d 284, 288 (Fed. Cir. 1995) (The Court of Federal Claims has no jurisdiction over claims "based upon an alleged violation by the government of the due process clause. This is so because the due process clause does not obligate the government to pay money damages.").

Count I also alleges gender discrimination in violation of Title VII of the Civil Rights Act of 1964. Complaint at 6. Title VII, however, grants exclusive jurisdiction over gender discrimination claims to the United States District Courts. Cottrell v. United States, 42 Fed. Cl. 144, 153 (1997) ("it is irrelevant whether the anti-discrimination statutes cited . . . provide a mechanism for money relief. Money relief meets only one prong of the Tucker Act requirements. This court lacks jurisdiction over plaintiff's discrimination claims on other grounds."). Thus, the parallel allegations in Plaintiff's Count II ("Violation of Title VII . . . Based on Retaliation") also are improperly before this Court. See Complaint at 6-7.

The same is true of Counts III and IV alleging negligent, reckless, and intentional supervision and retention of individual court employees. Complaint at 7-8. Those claims sound in tort, and are therefore beyond this Court's jurisdiction. See Restatement (Second) of Agency § 213; Sumter v. United States, 61 Fed. Cl. 517, 525 (2004) ("It is well established that the Court of Federal Claims lacks jurisdiction over cases sounding in tort.").

Counts V and VI concerning violations of the Florida Civil Rights Act fare no better. Complaint at 8-10. Alleged violations of state statutes are not among the category of suits upon which the Court's jurisdiction may be founded. See 28 U.S.C. 1491(a)(1).

Plaintiff's December 1, 2005 response to Defendant's motion to dismiss in effect amends the Complaint by (1) alleging a violation of the Back Pay Act (5 U.S.C. 5596(b)), and (2) requesting that the Court transfer the Title VII claims to a United States District Court. See Plaintiff's Response at 1, 5. We address below the Back Pay Act issue and the request to transfer.

The Back Pay Act

This Court and the United States Court of Appeals for the Federal Circuit previously have held that the Back Pay Act "does not, itself, provide a statutory basis for invoking this Court's jurisdiction." Sacco v. United States, 63 Fed. Cl. 424, 428 (2004) (citing United States v. Connolly, 716 F.2d 882, 887 (Fed. Cir. 1983)). Rather, "some provision of law other than the Back Pay Act must first mandate . . . money damages to an employee suffering from an unjustified or unwarranted personnel action[.]" Sacco, 63 Fed. Cl. at 428 (citing Walker v. United States, 11 Cl. Ct. 77, 80 (1986)). Assuming that Plaintiff could point to such a money-mandating law, this Court would still lack jurisdiction over his Back Pay Act claim.

Congress modified the scope of this Court's jurisdiction in 1978 with the Civil Service Reform Act (CSRA). That statute removed the Court's authority to hear various categories of civilian pay cases. See Worthington v. United States, 168 F.3d 24, 26 (Fed. Cir. 1999) (citing United States v. Fausto, 484 U.S. 439 (1988)). Among the category of cases withdrawn from the Court's jurisdiction were certain federal agency employment disputes. See Sacco, 63 Fed. Cl. at 428 ("Under well entrenched precedent, the Court of Federal Claims has no jurisdiction to entertain actions seeking monetary remedies stemming from adverse personnel actions over which the [Merit Service Protection Board (MSPB)] and the Federal Circuit have jurisdiction.") The question thus is whether Plaintiff is covered by the provisions of the CSRA.

As noted, Plaintiff's former positions with the District Court were as "Operations Clerk" and later as "Courtroom Deputy Clerk." Complaint at ¶ 5. The Deputy Clerk position is expressly designated by the District Court as an "At-Will," "Excepted Appointment" to which "Federal Government Civil Service classifications or regulations do not apply." Plaintiff's Exhibit 2 at 2. Similarly, Operations Clerks - as employees of the District Court - "*are not* included in the Government's Civil Service classification, but rather are considered

‘at-will’ Excepted Service employees of the Judiciary.”³ (Emphasis in original). Such “excepted service” employees have no administrative or judicial remedies under the CSRA for adverse personnel actions. See Blakenship v. McDonald, 176 F.3d 1192, 1195 (9th Cir. 2005). They are, however, “covered” by the CSRA in the sense that Congress deliberately denied certain remedies to them as a class. Consequently, this Court has no jurisdiction to hear Mr. Hill’s Back Pay Act claim. See Fausto, 484 U.S. at 455 (the CSRA’s “deliberate exclusion of employees in respondent’s service category from the provisions establishing administrative and judicial review for personnel action of the sort at issue here prevents respondent from seeking review in the Claims Court under the Back Pay Act.”).⁴

Request for Transfer

28 U.S.C. § 1631 governs the transfer of actions among the federal courts. The statute provides, in relevant part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

Accordingly, three factors must be present before the Court may transfer a case to another federal court: “(1) the transferor court lacks ... jurisdiction; (2) at [the] time the case was filed, it could have been brought in the transferee court; and (3) such transfer is in the interest of justice.” Skillo v. United States, 2005 WL 3216932, at *9 (Fed. Cl. 2005) (citing Rodriguez v. United States, 862 F.2d 1558 (Fed. Cir. 1988)).

³ See <http://www.flstd.uscourts.gov/default.asp?file=employment/benefits.html>

⁴ More recently, the Ninth Circuit in Blakenship similarly concluded that a court reporter for a United States District Court was an “appointed judicial employee [and] a member of the ‘excepted service’ under the CSRA.” 176 F.3d at 1195. See also Dotson v. Griesa, 398 F.3d 156, 160 (2d Cir. 2005) (“Although [Plaintiff] is covered by various provisions of the [CSRA], the statute excludes him, and most other employees of the judicial branch, from its administrative and judicial review procedures.”).

Considering first the interests of justice, the Court notes that Plaintiff had official, non-judicial avenues of review available to him as an employee of the District Court. Indeed, Plaintiff was aware of these options, and apparently pursued them for a time. For example, attached to the Complaint is a copy of a *Complaint of Discrimination Under the Judiciary Equal Employment Opportunity Plan* (EEOP Complaint) filed with the District Court on December 1, 2003. Plaintiff's Exhibit 1 at 3. Before filing the EEOP Complaint, Plaintiff received a *Notice of Proposed Adverse Action* on November 7, 2003. Plaintiff's Exhibit 4. Significantly, this *Notice* contained a "mandatory Employee Assistance Program referral," and informed Plaintiff of his "right to appeal" the action. *Id.* at 3. The same *Notice* stated:

If you request a review . . . this action will be stayed until that review has been concluded. You also have the option of replying to [the Chief Deputy Clerk for Administration] verbally or in writing, regardless of whether you decide to appeal.

Id. at 4. Aside from the fact that Plaintiff filed the EEOP Complaint, there is nothing to indicate that he pursued his right to review through the appropriate channels. To the contrary, from the documents that Mr. Hill has submitted to the Court, it appears he ultimately elected not to press his claim through the judiciary's internal grievance procedures. *See* Plaintiff's Exhibit 5 at ¶ 2. In light of the foregoing, and considering Congress' conclusion that "it was unnecessary to legislate multiple and redundant levels of judicial review for court employees,"⁵ the Court does not believe transferring this case would serve the interests of justice. Accordingly, it is unnecessary to discuss the first two prongs of the transfer test. Plaintiff's request for transfer is denied.

CONCLUSION

For the reasons stated above, Defendant's motion to dismiss is granted, and Plaintiff's request to transfer to a United States District Court is denied. The Clerk is directed to enter judgment accordingly.

IT IS SO ORDERED.

THOMAS C. WHEELER
Judge

⁵ *Dotson v. Griesa*, 398 F.3d 156, 176, n.14 (2nd Cir. 2005). *See Dotson* generally for a broad discussion of the Model Equal Employment Opportunity Plan as developed by the Judicial Conference of the United States.